



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 17, 1949

Hon. Carroll F. Sullivant Opinion No. V-945.

County Attorney
Cooke County
Gainesville, Texas

Re: The legality of the County Attorney serving as a trustee of the municipally controlled public schools at Gainesville.

Dear Sir:

We refer to your letter of recent date requesting an opinion of this department on the following question:

May the County Attorney serve at the same time as trustee of municipally owned schools?

Dual office holding is expressly forbidden by Section 40, Article XVI of the Texas Constitution when both offices are civil offices of emolument. In Section 33 of Article XVI the accounting officers of the State are forbidden to issue or pay a warrant upon the Treasurer for the payment of salary or compensation to a civil officer, who at the same time holds another office of honor under the United States or the State of Texas. Since neither the County Attorney or a trustee of a municipally owned school district is an office to be paid out of the State Treasury, Section 33 of Article XVI is not violated by the facts submitted.

The constitutional prohibition against the holding of more than one office of emolument (Art. XVI, Sec. 40) is inapplicable to the question under consideration for the reason that since a trustee of a municipally owned school district serves without compensation, his is not an office of emolument. Acts 1909, R.S., Special Laws, p. 507.

However, it is also a fundamental rule of law that one person may not hold at one time two offices, the duties of which are incompatible. Thomas v. Abernathy County Line Independent School District, 290 S.W. 152 (Tex. Comm. App. 1927); Fruitt v. Glen Rose Independent School District, 126 Tex. 45, 84 S.W.2d 1004(1935);

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Knuckles v. Board of Education of Bell County, (Ky.) 114 S.W.2d 511, 514; Attorney General Opinion No. 0-3199.

We have considered the statutes relative to the respective duties incumbent upon a County Attorney and a trustee of a municipally controlled school district. We can conceive of no sound basis upon which it may be said that the offices are incompatible. We have been unable to find any statute providing that either office is accountable to, under the dominion of, or subordinate to the other, or which provides that either office has a right to interfere with the other in the performance of any official duty. Nor have we been apprised of any reason why the duties of a County Attorney would be inconsistent or in conflict with the duties of a trustee of a municipally controlled school district.

In the case of Bonner v. Belsterling, 104 Tex. 432, 138 S.W. 571 (1911), the court held in part as follows:

"The board of education of the city of Dallas was created and its powers and duties prescribed by article 5 of the charter of the said city hereinbefore copied. The board derives its existence and all of the authority it possesses from the charter, which operates only within the limits of the city. By the provisions of the charter, the board had entire control of the school fund and of the property; in fact, of everything pertaining thereto. The auditor of the city is required to pass upon all accounts of the said board, and no act of the board has any reference whatever to the county or its officers. The relation of the board of education to the county is only incidental to its being a part of the system of free schools of the state. We therefore conclude that the members of the board of education are officers of the city of Dallas, and not of the county of Dallas. Gertum v. Board of Officers, 109 N. Y. 174, 16 N. E. 328; Throop on Public Officers, §27. The members of the board of education being of the city were not within the terms of article 5, §24, of the Constitution and it was

within the power of the Legislature to provide for their removal otherwise than by the judge of a district court." (Emphasis ours.)

For further information see Fowler v. Thomas, 275 S.W. 253 (Tex. Civ. App. 1925, error dismissed); Keyker v. Watson, 291 S.W. 957 (Tex. Civ. App. 1927).

It is our opinion, therefore, that the two offices in question are not incompatible, and that a County Attorney may serve at the same time as trustee of a municipally controlled school district.

SUMMARY

One person may hold at the same time both the offices of County Attorney and trustee of a municipally controlled school district; the said offices being not incompatible and the office of trustee not being one of emolument. Art. XVI, Sec. 40 Constitution of Texas.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
James E. Ferguson
Assistant

JEF:bh

APPROVED



FIRST ASSISTANT
ATTORNEY GENERAL